

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN ALLEN LUDWICK,

Defendant and Appellant.

C070182

(Super. Ct. No.  
CRF103028)

Appointed counsel for defendant Jonathan Allen Ludwick asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)).

Defendant filed a supplemental brief asserting (1) ineffective assistance by defense counsel, (2) misconduct by the prosecutor, (3) misconduct by the probation department, and (4) a challenge to the victim restitution order. Defendant's claims are forfeited because they are not supported by analysis,

citations to the record or citations to legal authority. In any event, the claims ultimately fail.

Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

#### BACKGROUND

Defendant repeatedly harassed his ex-wife Tammy Jo Whiteside while on felony probation in another matter. He created a social networking account using a false name and posted insulting and threatening messages to Whiteside. One message read: "I wonder if a person comes up missing if another person still can be arrested or tried for crimes. I wonder what your kids would feel if there [sic] mother came up missing." Another internet posting listed Whiteside's personal information, including her social security number.

In December 2010, defendant posted messages on Whiteside's Twitter account. Some messages declared his love for her while others insulted her. In addition, defendant fired a BB gun at Whiteside's house, left numerous "greeting cards" at her home (including an Easter card asking for forgiveness), and opened two "imposter" email accounts using Whiteside's name.

Defendant gave Whiteside's home address to Adrianna Rafanan and asked Rafanan to "beat" Whiteside. When Rafanan refused, defendant began sending threatening text messages to Rafanan. Rafanan contacted the police after receiving a message depicting a decapitated body. Whiteside had also contacted the police on

several occasions, filing reports of stalking, harassment and vandalism.

Defendant was arrested and charged with stalking with a restraining order in place (Pen. Code, § 646.9, subd. (b)), false personation (former Pen. Code, § 529, subd. 3), attempting to dissuade a witness (Pen. Code, § 136.1, subd. (b)), making criminal threats (Pen. Code, § 422), and graffiti (Pen. Code, § 594, subd. (b)(1)). He pleaded no contest to stalking with a restraining order in place and making criminal threats. In exchange for his plea, the remaining charges and trailing misdemeanors were dismissed with a *Harvey*<sup>1</sup> waiver.

The trial court concluded defendant was not suitable for probation, finding (1) the victim was particularly vulnerable, (2) defendant inflicted emotional injury with his crimes, (3) the degree of monetary loss was high, (4) the crimes were carried out with planning and sophistication, (5) defendant's criminal record showed a "pattern of regular or increasingly serious criminal conduct," (6) his prior performance on probation was unsatisfactory, (7) defendant was not genuinely remorseful, and (8) defendant will be a danger to others if not imprisoned. The trial court acknowledged that defendant expressed a willingness to comply with the terms of probation, but that factor did not outweigh the factors supporting denial of probation.

---

<sup>1</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

The trial court sentenced defendant to an aggregate term of four years in state prison, awarded him 13 days of custody credit (9 actual and 4 conduct), ordered him to pay various fines and fees, and denied his request for a certificate of probable cause.

#### DISCUSSION

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. Defendant filed a supplemental brief making various assertions.

#### I

Defendant asserts that his defense attorney refused to submit witness testimony that "could have been key" to defendant's defense. Defendant also claims his attorney was "too busy buying a murder trial to bother with facts in my case" and that "letters of referral [*sic*] were never used."

To avoid forfeiture of his claims of error, defendant had the burden to support his arguments with analysis and citation to evidence in the appellate record. (*People v. Hardy* (1992) 2 Cal.4th 86, 150 (*Hardy*); *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1159 (*Galambos*); *People v. Sangani* (1994) 22 Cal.App.4th 1120, 1135-1136 (*Sangani*.) He did not do so.

But even if his claims against defense counsel had not been forfeited, they would fail in any event. Defendant appears to

contend that he received ineffective assistance of counsel prior to and during the negotiation of his plea. Without a certificate of probable cause, however, such a claim is not cognizable on appeal. (*In re Chavez* (2003) 30 Cal.4th 643, 649-651; *People v. Stubbs* (1998) 61 Cal.App.4th 243, 244-245.) Moreover, because there is nothing in the record supporting this contention, defendant has failed to meet his burden of establishing that trial counsel was ineffective. (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1058.)

## II

Defendant further claims the prosecutor told him the following: "If I pleaded [no] contest I would be guaranteed less than 1 yr at 1/2 at county jail and no strike." Defendant alleges the prosecutor had a vendetta against him and was "witch hunting."

Once again, defendant fails in his burden to support his arguments with analysis, citations to evidence and citations to legal authority in order to avoid forfeiture. (*Hardy, supra*, 2 Cal.4th at p. 150; *Galambos, supra*, 104 Cal.App.4th at p. 1159; *Sangani, supra*, 22 Cal.App.4th at pp. 1135-1136.)

Moreover, defendant's assertions against the prosecutor fail because his accusations relate to the validity of his plea. Without a certificate of probable cause, such claims are not cognizable on appeal. (Pen. Code, § 1237.5.)

## III

In addition, defendant asserts misconduct by the probation department. He claims the probation officer lied to him,

refused to accept letters on his behalf, and refused to examine relevant evidence from his former mother-in-law.

Defendant's contentions are forfeited because he failed to support his arguments with analysis, citations to evidence and citations to legal authority. (*Hardy, supra*, 2 Cal.4th at p. 150; *Galambos, supra*, 104 Cal.App.4th at p. 1159; *Sangani, supra*, 22 Cal.App.4th at pp. 1135-1136.)

Furthermore, the record contains no evidence to support his allegations that the probation department treated him unfairly or denied him due process.

#### IV

Defendant also challenges the victim restitution order. He contends the victim was fired from her job and that she left her home due to foreclosure, not because he was stalking her.

But again, it is defendant's burden to support his arguments with analysis and citations to evidence and legal authority in order to avoid forfeiture. (*Hardy, supra*, 2 Cal.4th at p. 150; *Galambos, supra*, 104 Cal.App.4th at p. 1159; *Sangani, supra*, 22 Cal.App.4th at pp. 1135-1136.) He failed to do so. The claim also fails because there is nothing in the record to support it.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_  
MAURO, J.

We concur:

\_\_\_\_\_  
NICHOLSON, Acting P. J.

\_\_\_\_\_  
BUTZ, J.